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# JUVENILE RAPE VICTIMS

## HEARING

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

## COMMITTEE ON THE JUDICIARY
## UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

THE PROBLEMS OF JUVENILE VICTIMS IN SEXUAL ASSAULT CASES

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APRIL 24, 1985

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# JUVENILE RAPE VICTIMS

WEDNESDAY, APRIL 24, 1985

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The committee met at 10 a.m., in room 226, Dirksen Senate Office Building, Hon. Arlen Specter (chairman of the subcommittee) presiding.

Present: Senators McConnell and Simon.

Staff present: Neal S. Manne, chief counsel; Michael Russell, counsel; Tracy McGee, chief clerk; Vic Maddox, office of Senator McConnell; Rick Holcomb, office of Senator Denton; Laurie Westley, office of Senator Simon; Steve Ross, office of Senator Metzenbaum.

## OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator SPECTER. Good morning, the Committee on the Judiciary, the Subcommittee on Juvenile Justice will now commence, on this hearing to consider the problems of juvenile victims in sexual assault cases.

The Juvenile Justice Subcommittee has jurisdiction over these matters in a number of lines. The first by virtue of the fact that victims in rape cases, or alleged rape cases are very frequently juveniles and second, our supervisory authority extends to the Bureau of Justice Statistics which has recently published an extensive report on rape dealing with a variety of factors in attempting to determine how many rapes there are and whether there is underreporting of rapes, how rapes are handled by the criminal justice system in terms of encouraging victims to come forward. We also have, under the jurisdiction of this subcommittee, the Office of Justice Programs which had appropriated, because of legislation initiated by this subcommittee, substantial funding to assist rape victims with medical bills and on counseling.

So that is an ongoing matter and an issue of great public concern. There recently has been a great deal of public interest on the celebrated case involving the recantation of testimony by Ms. Cathleen Crowell Webb, who will be a witness here today and that has focused very substantial public attention on the problem of rape, the problem of the rape victim, of the handling by the criminal justice system of the entire subject and it is in this context with a

great deal of public attention that we may be able to muster some of the necessary resources to deal with this very major problem.

As district attorney of the city of Philadelphia, I dealt with the problem of rape prosecutions over a protracted period of time in two terms, started the first program for the treatment of rape victims at the Old Philadelphia General Hospital going back to 1966. It had been the practice prior to that time, that a rape victim was interrogated like victims of all other cases in a large room in a police district with the victim sitting at a desk with a detective telling a very intimate and difficult story in a large room where, at the mention of the allegation of rape and some of the details, all other conversations were stopped and everybody would listen to what the victim was saying.

That procedure was changed in Philadelphia and was copied nationwide that to have rape victims questioned, counseled in private sessions. There have been in Philadelphia no preservation of evidence in a very systematic way and with the taking of all rape victims to the Philadelphia General Hospital at that time, there were procedures for preserving garments, for taking photographs, to have a permanent record of bruises, of any evidence of physical injury, brushing to preserve evidence of hair fibers, which might have evidentiary value at a later time. And I am glad to say that in the intervening 19 years since 1966, there has been a tremendous improvement in the ways of dealing with the problems of rape and the rape victims.

There were cases of recantation that we dealt with and that raised very difficult legal issues concerning the quality of evidence which has to be presented in order to reverse a judgment of conviction and to have a new trial granted or to change a prior judicial determination. These are all matters of great importance where the Office of Justice Programs under Ms. Lois Harrington, may well be able to fashion some guidance, maybe some additional studies at the Federal level where the funding is present, which we had achieved last year, to better understand this very important issue so that genuine rape victims will be encouraged to come forward and to testify and that rapists may be dealt with but in an overriding consideration so that justice will be done and the guilty will in fact, be convicted.

Also there are many ramifications of the recantation of Ms. Webb's testimony and the impact that will have on rape victims, and when a matter like this happens with such national attention—there have already been many, many cases where defense witnesses have referred to that case, in arguments to the jury and it has a tremendous effect—so that to the extent that we are able to fashion an objective determination of these issues, and I think that this subcommittee can be of some assistance, it is a matter of great public attention.

I regret the delay in starting this hearing this morning, but I had to be at two other subcommittee hearings. We have very extensive scheduling problems and there was a meeting of Senators on the resolution which may be brought to the floor later this week on the President's visit to the Bitburg Cemetery so I want to express my regrets for keeping so many of you waiting here for the time that we were unable to convene this hearing earlier.

Now, I would like to yield now to my distinguished colleague from Illinois, Senator Simon.

## OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Thank you, Mr. Chairman.

There has been a great deal of public attention focused on this case. I am concerned about that. We have here a very unusual case. Mrs. Webb, who has shown great courage, has a case that has received a great deal of attention and is being handled by the courts of Illinois and the Governor of Illinois and proceeding as it should.

My concern as we look at this one case, is that it not do damage to the whole question of prevention of rape—that we not discourage women who are attacked from coming forward. This is already a terrible problem in our society.

The case that we will be discussing this morning, and which is before the Illinois courts, is not at all typical and I hope that we do not generalize in our society now on the basis of one unusual case.

Senator SPECTER. Thank you, very much, Senator Simon.

I would like to now turn to our distinguished colleague from Kentucky, Senator McConnell.

## OPENING STATEMENT OF HON. MITCH McCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator MCCONNELL. Thank you, Mr. Chairman.

I want to commend you for holding these hearings. As you know, Mr. Chairman, and I think that Senator Simon knows as well, my particular area of interest related to this over the years has been sexual assaults against children.

The statistics that have typically been cited indicate a huge percentage of children aged 11 and under who assert that they have been sexually assaulted are in fact, telling the truth. One of the disturbing things about this case that we will be hearing about this morning, is the whole question of the truth with regard to sexual assault. There are a number of children now who seem to be coming forward and most of them I must confess, over 11, have indicated that they have not told the truth in alleging a sexual assault. I think that this is all a very important area of inquiry and I look forward to hearing from witnesses that you have scheduled, Mr. Chairman.

Senator SPECTER. Thank you, very much, Senator McConnell.

We will proceed now to hear from our first witness. Our lead witness is a distinguished professor of law, Prof. Paul Rothstein, who is a professor of evidence at the Georgetown University Law Center where he has held tenure since 1970.

Professor Rothstein has unusual credentials in that he serves as chairman of the American Bar Association's Committee on Rules of Criminal Procedure and Evidence, and will set the stage by discussing the rules of law as it relates to recantation of evidence, the courts' approach on this subject, the legal theories underlying this area of the law, and the basis for having recanted testimony evaluated by the original trial judge.

I appreciate your being here, Professor Rothstein, and look forward to your testimony.

## STATEMENT OF PROF. PAUL ROTHSTEIN, GEORGETOWN UNIVERSITY LAW CENTER, WASHINGTON, DC

Mr. ROTHSTEIN. Thank you, Mr. Chairman.

Senator SPECTER. What you have submitted will be made a part of the record in full and to allow the maximum amount of time for questioning, it would be appreciated if the essential points would be summarized.

Mr. ROTHSTEIN. Thank you, very much, Mr. Chairman.

You are to be complimented, together with your subcommittee and Senators Simon and McConnell, for opening up and looking into this very important question. Why is this man Mr. Dotson, still in prison when the victim has said that the rape never occurred?

And I have been asked to tell you the law's thinking about why it should be difficult to recant testimony of this sort, why it is difficult to get out of prison 6 years after the conviction, even when the victim has recanted.

I am not necessarily in sympathy with keeping Mr. Dotson in prison. I think that when the victim has recanted in a case like this, there is something wrong with the justice system if it does not at least look very carefully at whether or not the conviction was proper in the first place.

But I have been asked to tell you what the law's thinking is on this, why this man may still be in prison. As a preliminary it is interesting to note that had this story come out during the time of Mr. Dotson's trial, when all he must do to be acquitted, is to raise a reasonable doubt about whether he is guilty or not, that even at that time, there is a severe question as to whether this story would have been received by the court, because of the rape shield laws. I am talking about the country generally. And I am trying not to focus too particularly on the facts of this case, but the problem of recantation generally. I have no inside information about the facts of this case. The only way that you can judge a particular case, is by sitting daily at the trial. All that I know is what has been reported in the press, except that I do know about the law. Had this story come out originally at the trial, such that Mr. Dotson's defense lawyer would have known about it, there is a severe question in the law as to whether it would have been received even though it does seem to raise a reasonable doubt about his guilt. Why do I say that? It is because of the rape shield laws that have been enacted widely around the country including in the Federal jurisdiction. They would prevent showing that Mrs. Webb, at least as reported by the newspapers, had been having sexual intercourse with her boyfriend, and had feared that she might be pregnant—although she was not—by the boyfriend, and had feared that she would be ejected from a foster home that she loved, and therefore, charged rape against Mr. Dotson—not her boyfriend—with whom she had not ever had intercourse, either voluntarily or involuntarily, in order to cover up the feared pregnancy. That is, at least, the gist of the recantation story at the current time as I read it. The

rape shield laws prevent showing intercourse between the victim and a third person, the boyfriend.

This is a hard pill to swallow and may reflect that the rape shield laws— although very valid, and serving a very important interest, the privacy of the rape victim—may be accidentally drawn too broadly, if they would prevent this kind of exculpatory evidence—which does, in fact, raise a reasonable doubt about guilt—from coming in at the trial.

But we are not talking about the trial, we are talking about 6 years later, when the effort is to reopen a judgment once rendered. And now the law believes that, at this point, it should be rather difficult to reopen a case once closed. Why should it be difficult? Well, the policy of the law, and I am asked to express what that is, the policy of the law here is that there is a social interest in the finality of judgments once rendered. Now, that sounds like empty rhetoric. That sounds like a shibboleth, like pie in the sky, that has no meaning. But it is backed by some important considerations.

If victims and witnesses could recant, and get the convicted person out of prison, years after judgment has been rendered, what would happen? Victims would be, to use the vernacular, bugged to death; they would be bothered, harrassed, approached, all sorts of attempts from cajoling to bribery to threats would be used against them to get them to recant. This would not be good for the system. The system—or so the law believes—has an interest in saying that once a judgment has been rendered, once all the appeals have run, once all the time for appeals has run, and the time for habeas corpus has run—and the law gives people ample time to do all of these things—that then there comes a time when the question must be laid to rest and there must no longer be any doubts. That is a hard pill to swallow in a situation like this where there is a flesh and blood man in prison and the victim has said, that the act did not occur.

Now, what are some of the underlying reasons that the law would give for suspecting recantations?

First of all, the original judge—who sat at the original trial and heard all of the evidence, and appraised the credibility of all of the witnesses—hears the recanted testimony. He must decide which story is true, the recanted story or the original story? One of them is false. It is a difficult problem or so the law holds. The judge, who has heard both stories and seen the evidence both times, can compare the two. The judge now, today, must look at all of the evidence. In this particular case, I understand that there was a semen test done. It tended to suggest that maybe the recanted story was not in all of its particulars true, but it did not suggest either that the recanted story was false. There was a lie detector test that tended to show the recanted story was true.

The judge is looking the witness in the eye and he has looked the witness in the eye at the trial and he makes a comparative judgment.

Now, what are some of the reasons that a recanted story might be false? Why might a person falsely recant? Why might one not believe a recantation?

I think that there are three reasons that the law gives for suspecting recantations. No. 1 is, that the recantation might be self-

interested. No. 2, a particular moral code of the individual victim witness might dictate a recantation when that is not precisely true. And No. 3 are psychological reasons why the recantation might be false.

Now, let us examine these one at a time.

No. 1, the self-interest idea. There might have been bribes, approaches with money, threats, a desire for publicity. A recantation in a case attended by tremendous publicity does land you on the cover of People, and Time magazine and in newspapers and on all the talk shows. Some people might be susceptible to that kind of thing. But there might have been threats and there might have been bribes, attempts to pay. Many of these things are less realistic in the *Webb/Dotson* case, than in your more typical case of recantation: Some kinds of high crime like murder or mafia connected crime, where in fact, there has been an attempt to bribe and threaten a witness into a recantation.

Senator SPECTER. Mr. Rothstein, do you believe that the general legal standards applicable to a recantation are essentially correct and do not need modification in your judgment?

Mr. ROTHSTEIN. Yes, I do think that they are essentially correct for the mine run of cases involving recantations—there should be high barriers to reopening many years later a judgment once rendered.

Senator SPECTER. And that is the standard that the trial judge applies to this in deciding whether a new trial should be granted or the defendant acquitted and released?

Mr. ROTHSTEIN. Well, the nuances vary around the country. At the trial all the defendant has to do is to raise a reasonable doubt to get off. But after there has been a conviction against him and 12 jurors have all considered it and unanimously considered all witnesses and evidence, and come in with a verdict of conviction beyond a reasonable doubt; then the standard is and should be much higher.

It can range from a—not just raising a reasonable doubt, but preponderance of the evidence, preponderance of the probabilities of even clear and convincing evidence.

Senator SPECTER. Well, is the standard for reversing a conviction that the defendant at that point must show by a preponderance of evidence, that the conviction was wrong?

Mr. ROTHSTEIN. It ranges from that upward, to an even higher standard than that around the country and in addition——

Senator SPECTER. What is the highest standard?

Mr. ROTHSTEIN. Clear and convincing or probability of innocence, or manifest injustice; and there is an additional qualifier that it must be newly discovered evidence, that could not, with due diligence have been discovered earlier.

Senator SPECTER. Well, if you have recantation you could not possibly satisfy that standard, because the witness had whatever knowledge is present at the later date at the time of the trial.

Mr. ROTHSTEIN. Could not have been discovered by the defense.

Senator SPECTER. Could not have been discovered by the defense?

Mr. ROTHSTEIN. Yes.

I was recounting some of the reasons why recanted testimony could be suspected. The second reason that I was going to get into

was the particular moral philosophy or peculiar moral beliefs of the particular recanting victim witness, for example, some people believe—and this may generally in other contents be admirable—that it is time to turn the other cheek, that even if the original crime did occur, that this man has paid for it, he has been in prison a long time, and I am forgiving, forgiveness is a high value. And therefore, I will recant. This man has paid, it did occur, but I will recant.

The next heading that I discussed, as a reason why one might falsely recant, has to do with psychological factors. In a rape case, for example, the rape victim frequently feels—and this is totally irrational, but it is a real psychological fact, and it is very frequent—guilty or somehow responsible for the rape. That is our society's fault, I suppose, that they make them feel that way. They are in fact usually in no way responsible or guilty for their own rape. But they feel—irrationally—in the subconscious, guilty or responsible for the rape. If that is so, if you are feeling guilty enough, like you were responsible for the rape, you will say, gee, I am the guilty one and I am the responsible one for this rape. This is irrational but this is the way that rape victims feel. I should let this guy off. I caused the rape. I was too attractive, or too sexually provocative. It is all not true.

Senator SPECTER. Let me interrupt you at this point and defer to Senator Simon for his questions, please.

Mr. ROTHSTEIN. Fine.

Senator SIMON. How does Illinois law compare to your general description of the law?

Mr. ROTHSTEIN. It seems to be in accord with this general description. Those are the policies that are at work and, in general, around this country they do try to put the case back in the hands of the original trial judge, if they can, because he has seen both stories.

Now, that does present a problem because sometimes a trial judge will be interested in upholding the original verdict because he was the man in charge. But he did not render the verdict; the jury did.

Continuing on, the other aspect of this psychological factor that is operating on recanting victims is that another common psychological effect is denial that it ever happened. Think about it for a moment, and put yourself in the position of a rape victim, put yourself in the position of a person being raped. It is one of the most horrible atrocities that could happen to humankind. Therefore, psychologically the victim puts up a barrier and begins to say over the years, this did not happen, this could not have happened. It is the well-known psychological effect of denial and if that sets in to a strong degree, a rape victim could well say it did not happen, and believe that it did not happen.

Senator SPECTER. Mr. Rothstein, I do not want to interrupt you unduly but we have budget considerations this afternoon and the majority leader has called a meeting at 11 a.m., so that we are going to have to move through with some dispatch.

If you could be a little more responsive.

Senator SIMON. I think that he has answered my questions and I have no further questions.

Mr. ROTHSTEIN. May I wrap up and say that perhaps the law has found the perfect compromise here. The integrity of the law is maintained by maintaining the conviction but in a case where that is too unjust, the Governor has the power to pardon or commute, therefore the integrity of the law is maintained and yet justice is done. That kind of compromise has been used in many cases. There are a couple of cases where people have killed out of necessity—in one case in a lifeboat that was adrift for month and they drew straws and they killed and ate one of the members. There was no other source of food. One perished voluntarily to save many. They said that we have the defense of necessity. That to me was murder. To the law that was murder. The integrity of the law had to be maintained. They convicted those people of murder. However, in one English case like this, the Queen later commuted the sentence, because there were certain powerful considerations of justice.

That method is perhaps the best compromise between individualized justice and the integrity of the law—justice in the general case.

Senator SPECTER. Well, Professor Rothstein, what considerations, in your judgment, would justify executive clemency by the Governor of Illinois that would not be present to warrant the grant of a new trial by the trial judge?

The interest of justice would be coterminous, would it not, in this case, from those two considerations?

Mr. ROTHSTEIN. I think that it would be up to the Governor to himself examine all the evidence, both from the real trial and the present recantation, to make his own assessment of the credibility of the stories. He is not laboring under the high threshold the law imposes for reopening a judgment. He can make the determination in the first instance as though he is coming to it fresh, as though there has been no conviction, and he can decide whether he believes that the man is guilty or innocent.

Senator SPECTER. But he would be substituting his judgment for that of a trial judge?

Mr. ROTHSTEIN. That is right and I think that should be used very, very sparingly and very, very rarely.

Senator SPECTER. Why at all?

Mr. ROTHSTEIN. You raise a very good question. In fact, I am not advocating that. What I am saying is that if anything is to be done, I see that as a possible way to reconcile the competing interests here, but I am not recommending that that be done. That is not for me to say.

Senator SPECTER. Professor Rothstein, thank you very much and we very much appreciate your testimony.

Mr. ROTHSTEIN. Thank you very much.

Senator SPECTER. I would like to call now Mrs. Cathleen Crowell Webb and her attorney, Mr. John McLario.

## CATHLEEN CROWELL WEBB, JAFFREY, NH, ACCOMPANIED BY HER ATTORNEY, JOHN McLARIO, MENOMONEE FALLS, WI

Senator SPECTER. Thank you for joining us, and Mr. McLario, as Mrs. Webb's attorney, you may proceed to make an opening statement.

Mr. MCLARIO. May I also compliment you, Mr. Specter, Simon, McConnell and each member of your committee for your concern over a poor young man who has been falsely accused of rape in my opinion.

From the moment that I was contacted by Cathy, I have submitted her like a sacrificial lamb to the Illinois State's attorney's office, to the defense attorney, and others for unlimited interrogation, scientific testing, polygraph examination and any other means without limitation to serve justice and present the truth.

As an attorney, who practices law in the greater Milwaukee area, it is a first priority of our great profession to seek justice for all mankind. I am honored to serve my profession in this worthwhile endeavor. We only wish to present truth, not by taking you into a forensic arena or generalizing about Cathy's testimony, on April 4, 1985, but to prove by the record, there are no conflicts in Cathy's testimony, and as the courtroom was stunned by the court decision so will the most suspicious readers question this decision. At your request I will give the page numbers of compound multiple confusing questions to Cathy. Please also note how the judge ruled on objections. Note one of the misstatements by the prosecution wherein, she talked or stated that Cathy, you stated hearing a voice from God, and of course, Cathy answered that no, there was no such testimony.

On page 72, the court after Cathy's testimony granted an adjournment on the State's motion. The stunned outburst caused the judge to say that he would have to clear the courtroom among others. And the court was filled with people——

Senator SPECTER. What is wrong with that, Mr. McLario?

Mr. MCLARIO. Nothing at all, Senator Specter, but there were people there from the media mostly that were, I believe very discriminating people and it showed that they were stunned, and that is the only evidence, the only reason that I refer to it.

Senator SPECTER. You are saying that there was no outburst in the courtroom to warrant the judge clearing the courtroom?

Mr. MCLARIO. No, I am saying that there was an outburst, when he said that it was adjourned, there was a gasp and the judge as I recall, pounded his gavel and the words in the record, say that if there is any outburst or any demonstration, words to that effect, that the courtroom will be cleared. And I believe that that is just evidence, that here is one man's decision but here is a courtroom of media, people who are used to examining fiction from fact, and in their evaluation after Cathy's testimony, I believed that they were stunned and I believe that they believed something different than the judge.

Senator SPECTER. So you believe that the gasp showed a different response of those in attendance, contrasted with the judge so that your point is that the gasp showed a different response from those in attendance, contrasted with the judge's official decision?

Mr. MCLARIO. In my humble opinion, yes.

Also, of course, the media there knew of the alibi witnesses and in conclusion, a few people do not understand Cathy's motive for restitution, but as our forefathers had a faith in God that made them willing to risk their lives and fortunes, Cathy is also saying, I am willing to risk all because of my personal faith in God, which

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has stirred my conscience, and convicted me of this wrong, and I must obey God regardless of the consequences.

I can no longer live in a prison of guilt that restricts my soul. Cathy, with my support and her pastor's support and others will do right to clear Gary Dotson until the stars fall.

Thank you and may I introduce to you, Cathy Crowell Webb.

Senator SPECTER. Perhaps a few questions before we turn to Mrs. Webb.

We are obviously concerned with what the law is in any case with the administration of justice for the individual defendant. The law has to move from that to generalize principles to do justice in all of the cases which come before the court, and before getting into some of the specifics of this particular case, I would like to ask you a few questions and perhaps other members of the panel would as well, because of your familiarity with these issues and the problems which have come up in this context.

Putting aside the specific case and the innocence or guilt of Mr. Dotson, which is obviously paramount in this case, what impact do you believe that there will be on other rape victims, in terms of their being willing to come forward to testify?

There is a very substantial body of evidence that a relatively small fraction of rape victims are willing to testify because of the many problems associated with being a witness or a prosecuting witness in a rape case. What is your judgment as to the potential impact on other women who are raped willingness to come forward to testify?

Mr. MCLARIO. Senator Specter, I would trust that a rape matter is so serious and so devastating to any woman that this, of course, would not affect that in any way. I believe that this is a totally unique case and no one would want to see an unjust person languish in jail. I do believe this, that it may make the police officers more diligent in their inquiry so that there are less and less rapists let loose but also I trust that it will make the policeman cautious so that if a person is not guilty of rape, he will not be convicted.

Senator SPECTER. Do you think, had there been greater diligence by the investigating officers here that the truth would have come out and Mrs. Webb would have recanted prior to conviction?

Mr. MCLARIO. In my opinion, yes.

Senator SPECTER. With respect to some of the specific evidence, Mr. McLario, I think that it might be useful to have your expert position on the evidence, which has been perhaps conflicting.

One line of testimony which has been reported in the media, relates to a pubic hair which matches the defendant's but does not match the alleged victim or the boyfriend of the alleged victim, and there has been some contradictory press reports about the evidentiary certainty of that hair analysis.

What are the facts as you understand them?

Mr. MCLARIO. The facts are that out of seven hairs, I believe that they take certain standards from certain parts of the body and they have to take this hair and match it to these standards and it was one hair that the scientist could not match to the standards, but he also testified that he did not know where these standards or other hairs came from and if it came from a few inches from where the standards came from, that it could cause——

Senator SPECTER. What do you mean, where the standards came from?

Mr. MCLARIO. Well, that means——

Senator SPECTER [continuing]. That there are criteria for evaluating whether a hair follicle is consistent with the hair follicle of a given person and pubic hairs have different characteristics than facial hair or hair from the head.

Mr. MCLARIO. Yes, and as I understand it, pubic hairs have the least probative value and they are the most difficult to evaluate but as I understood his testimony that if it could be taken from the front part of the pubic area, as compared to the rear part, that could also cause some problem and his evaluation was totally subjective, looking through a microscope.

His conclusion in this testimony was this, and as he was examined, it could have come from a partner of Mr. Burn's who had sex with him, it could have been communicated to her in that manner. It could have been communicated by her——

Senator SPECTER. Mr. Burns was the boyfriend at this stage?

Mr. MCLARIO. He was a friend, yes, sir, that she had relations with. Her specifics were that it was not a boyfriend but a physical relationship. The home that she lived in had other male people, that it could have been on a bar of soap and it could have been in the laundry. We do not like to raise these things, but the conclusion from the scientist was that he did not know where it came from, and he said it was similar to Gary Dotson's but that does not mean that it was not similar to thousands and thousands of other individuals.

So that as one hair, as I have said, I do not think that you can weave a conviction from that.

Senator SPECTER. There was other evidence relating to semen stains on the underwear of the alleged victim which were consistent with Mr. Dotson and not consistent with Mr. Burns?

Mr. MCLARIO. No, I believe that that has been refuted. The semen stain could be consistent with Cathy, could be consistent with Burns, and could be consistent with Dotson. It was so general that they could not make any conclusion regarding the semen stains. The semen stains seemed to be evidence because they covered such a large area of her undergarment. However, that same scientist testified that each person is different and they discharge up to 7 days after sexual relations and I propose that it depends on the texture of the garment. He said that this area also could have this stain depending on her activity. She was working that day perspiring, sweating, and working around cooking facilities and doing other things that could have caused her to perspire and the semen stain was within that stain or perspiration.

Senator SPECTER. There is also the reported evidence that a policeman found Mrs. Webb dazed and staggering through a wooded area; a physician testified about injuries and her arm being bruised, and her breast being scratched; and the stomach swollen; signs of trauma in the vaginal area.

Mr. MCLARIO. Yes, in that regard, the wooded area, I think that is very evident. When she first, when the police car came toward her, what did she do according to the record, she went to try to hide in the bushes. She did not want the police involved in this

scene. She wanted to go home and tell her foster parents about it and then have the whole thing hushed up or perhaps it could be "she never believed the police would find out." As I understand it, when the policeman came up to her, she did ridiculous things like asking him for identification, totally bizarre, I believe, from a rape perspective.

Senator SPECTER. She wanted to have what hushed up, Mr. McLario?

Mr. MCLARIO. She did not want this to be before the police. She expected to cry rape to protect her from her promiscuity and go home and tell her foster parents about it and convince them that it was done and if I am pregnant, I have got an excuse, but she did not want to report it to the police.

Senator SPECTER. So she did not expect to carry it as far as it went, you are saying?

Mr. MCLARIO. That is correct.

Senator SPECTER. Well, how about the business of the injuries to her arm, her breast, her head and stomach, vaginal area?

Mr. MCLARIO. Dr. Labrador testified in court on the day that he testified that all of these injuries could be self-inflicted and the brutal bruises that has been said, through the record, here is what the doctor prescribed when she went into the Illinois Suburban Hospital; an aspirin and some cold packs, and that was for this brutal rape. No band-aid put on any cuts, they were minimal scratches by her with a piece of glass. The next day she went bicycle riding and went shopping with a friend. I do not believe that is the picture of a rape victim. No rape counseling.

Senator SPECTER. And what is your comment on the matter relating to the identification that Mrs. Webb made in 1977 from mug shots as to Mr. Dotson's best friend as one of the other passengers in the automobile?

Mr. MCLARIO. Now, we are referring only to the best friend.

It is my understanding that there were five pictures or six pictures approximately placed in front of her. Whether this friend was among them, I do not know, but she was taken to a lineup and at that time, a girl who had just turned 16 and she was asked to identify Mr. Dotson, which of course, she had the picture and as I understand it had seen the picture, so that he was easily identifiable. She testifies that she did not make any definite identification of anyone else. She had to identify this person, Mr. Dotson, because she felt compelled to even though she had already given the pictures back to the officers and said, no, it is none of them and when they laid them out in front of her again, this picture was so much like him that she felt that if she did not identify Gary Dotson, that everyone would know that she was a liar and she had to do that.

Senator SPECTER. Mr. McLario, do you think that the trial judge in Illinois applied a wrong standard to the recantation issue?

Did Mrs. Webb want to confer with you?

Mr. MCLARIO. She is just correcting me that it was so much like the sketch of course, that is what I am talking about.

I think that the judge was too absolute in his decision and he was applying it to all recantation cases, and there are 19 in the State of Illinois and all of them have not been accepted by the court.

This is a unique case. It is individual and it is unfortunate.

Senator SPECTER. Do you think that there is a wrong legal standard applicable in Illinois, or generally the probative value of accepting recanted testimony?

Mr. MCLARIO. No, I do not. I believe that the standard is right, but I do believe this in my own opinion and you being a former district attorney know that when we pick a jury that is going to serve on a criminal matter and his freedom is so important we question that person to see if there is any possible bias, good people, well meaning people, as this judge is.

Senator SPECTER. You think that the standard is correct, but just incorrectly applied?

Mr. MCLARIO. That is correct. And I do believe this though, in this case, we would not allow a judge who had sentenced Gary Dotson 6 years ago, be in a decisionmaking process, because it would, I think, purify the law more if we had someone come in who did not have any possible contention or perception by others or bias of prejudice.

Senator SPECTER. Why is that, Mr. McLario? The judge is not responsible for the jury's verdict or for what is done in the case, which is based upon testimony, which is later changed?

There should be no embarrassment on his part to have a different judgment based on different circumstances and different evidence, would there not be?

Mr. MCLARIO. I agree wholeheartedly. The judge should not have any embarrassment whatsoever. He——

Senator SPECTER. So why change the judge? He is the one who presided at the first trial and has intimate familiarity with the case.

Mr. MCLARIO. But if he was a juror serving on a jury we would not want anyone to be able to criticize the fact that he may have some feeling because he was the one that ultimately reviewed it and gave the sentence.

Senator SPECTER. Senator Simon?

Senator SIMON. Are you admitted to practice in both Wisconsin and Illinois?

Mr. MCLARIO. No, I am not, only in Wisconsin and in Florida. The judge graciously allowed me to appear just as a representative of Cathy Crowell.

Senator SIMON. As you look at the statutes in Wisconsin, I assume that you have examined them and compared them to Illinois?

Mr. MCLARIO. Yes.

Senator SIMON. Do you find a great difference in this question of recantation?

Mr. MCLARIO. No; I really do not. I think that it is just how it is applied. And it is not absolute as the good professor said. I think that you have to take each case on its own merits.

Senator SIMON. And on the process itself, your feeling is that a different judge should be assigned other than the one of the original trial judge?

Mr. MCLARIO. That would be my opinion just to prevent and although it may not exist, to prevent the slightest suspicion that a

decisionmaker could have any prejudice that he does not even realize that he had.

Senator SIMON. You mentioned that there are 19 cases of recantation in Illinois. As you have reviewed those other cases, have you found any pattern, are there lessons that can be learned?

Mr. MCLARIO. No; because I think that they almost all fit the same situation and it is always where it is a codefendant, not anything like this situation, Mr. Simon.

Senator SIMON. I have no further questions, Mr. Chairman.

Senator SPECTER. Mrs. Webb, we very much appreciate your being here today and look forward to your testimony.

## STATEMENT OF CATHLEEN CROWELL WEBB

Mrs. WEBB. Thank you.

Good morning, honorable Senators.

I would like to thank you for this rare opportunity that you have given me today to speak before you at this unbiased hearing. If I had known back in high school speech class that I would one day speak before Members of the U.S. Senate, I would have paid closer attention.

I am simply a homemaker and a mother who wishes to right a terrible wrong that I have committed against another human being 6 years ago. Gary Dotson was convicted with my false testimony of kidnaping and raping me. He was innocent of any wrong doing against me then and he remains innocent today.

I lied 6 years ago and I am telling the truth now. Why did I lie? Without going into elaborate detail, let me explain.

After having sex with a boy shortly after I turned 16 years of age, I panicked thinking that I was pregnant. I made up the elaborate lie to make it appear for the benefit of my legal guardians that I had been forcibly raped so that in the event of a pregnancy, it would not look like it was my fault.

At the time, I believed that if they had found out that I had voluntary sex with a boy, I would be removed from the home. I was insecure as to their love. My goal in life at that point was to grow up and become independent of others for my needs. I felt in order to achieve this goal, I had to be academically successful. I did not want to be removed from situations where my academic opportunities were very good. This was my motive for fabricating the lie of a rape.

I hope that the circumstances surrounding my identification of Gary Dotson will also be made clear in this hearing.

The other question that you may want answered is, Why have I come forward to recant my lie? About 3½ years ago, I made a decision based on faith in Jesus Christ, and immediately thereafter—by that I mean the next day—the Lord convinced me that I needed to make restitution for this lie against Gary Dotson.

In my mind, I said no, because of the many obvious consequences of doing so. My conscience has not given me any peace since. Three and a half years ago, I had the faith of a spiritual baby. Since then, I have grown in faith and trust in God and I have received the strength and the courage to right this terrible wrong.

Later in this hearing, if you will allow me to explain, I would simply—what my faith is based on and what exactly my conversion means, I would be willing to do so. I do not want there to be any confusion on this important matter.

Honorable Senators, I trust that with your wisdom and your experience, it would be readily apparent that on April 4, 1985, I did not contradict myself and neither were there any discrepancies or inconsistencies in my testimony.

I feel that this is of the utmost importance to my credibility and therefore, ultimately to Gary Dotson's freedom. I know that you, who have dedicated your life's work to law and order and most importantly to justice, will speak out for the truth. I trust that the truth is evident now. Six years ago I lied. Then as now, Gary Dotson is an innocent man, unjustly imprisoned. I am deeply sorry for what I did to him, to this young man. I have tried to do my best now and I hope that others will see the truth from the total record, and free this innocent man.

Senator SPECTER. Thank you, very much, Mrs. Webb.

You said that there was one item that you would care to elaborate upon with respect to your faith conversion. Why do you not proceed to do that.

We are interested in whatever you want to tell us.

Mrs. WEBB. I would just state that my faith is based on the Bible. Would you care for me to elaborate and give you the verses that I base my faith on?

Senator SPECTER. Well, however you wish to tell us, we are interested in hearing.

Mrs. WEBB. Because I want the record to be completely straight, I want to quote from the verses that I based my testimony on.

The first verse that I base my faith on and why I base my faith on the Bible comes from John, chapter 1, verse 1: In the beginning was the word, and the word was with God and the word was God.

I believe that the word that they are talking about is the Bible. And in Second Timothy, 3:16, it goes on: All scripture is given by inspiration of God and is profitable for doctrine, for reproof, for correction, for instruction in righteousness.

My conversion happened 3½ years ago and it was a one-time decision. I knew that I sinned all through my life, I knew that I was a sinner. I believe that lying is a sin. It is not permissible in any case.

Senator SPECTER. Mrs. Webb, when your conversion occurred, the 3½ years ago, why did you wait the intervening period of time before coming forward with your change in testimony?

Mrs. WEBB. As I stated earlier, when I was converted, I was a spiritual baby. Paul talks about babies being fed with milk and that is how I was fed, I had to grow. The only faith that I had was a saving faith and I had to grow in my faith and trust that the Lord would take care of me and would give me the courage and strength to come forward and tell my lie.

Senator SPECTER. Did anything special happen at any stage along the evolution as you describe it or what was it that at some point in time, triggered you to actually make the decision to step forward and publicly change your testimony?

Mrs. WEBB. After I accepted Christ into my heart and became a Christian, through prayer and through reading the Bible, and if I may just elaborate? The reason why my faith and prayer—this word is so important—is stated in Hebrews, chapter 4, verse 12: For the word of God is quick and powerful, and sharper than any two-edged sword, piercing even to the dividing asunder of soul and spirit and of the joints and marrow and is a discerner of the thoughts and the intents of the heart.

Senator SPECTER. Mrs. Webb, at what point did you change your testimony?

You presented it in court in early April, at what point did you come forward to tell anybody that what you had testified to at the trial of Mr. Dotson was a lie?

Mrs. WEBB. As I stated before, immediately after I was converted, I realized that I had to make restitution for this but I was afraid of the consequences. And my conscience——

Senator SPECTER. Were you converted sometime in late 1981 or early 1982?

Mrs. WEBB. It was in August of 1981.

I had the guilty conscience but I was still afraid of the consequences. And they were overpowering. Eventually, in March of this year, my conscience overpowered my fear of consequences and in early March I realized that I would have to take a step and tell someone.

Senator SPECTER. And who did you tell first?

Mrs. WEBB. Mrs. Bonnie Nannini, who is my pastor's wife.

Senator SPECTER. And whom did you tell next?

Mrs. WEBB. My husband.

Senator SPECTER. And beyond that?

Mrs. WEBB. Mr. McLario.

Senator SPECTER. Mrs. Webb, aside from some of the specific matters that we may discuss in a few moments we are very much concerned about some of the broad principles applicable to your situation.

Starting with the aspect of a juvenile's testimony how old were you when this alleged rape occurred?

Mrs. WEBB. I had just turned 16 when I cried rape.

Senator SPECTER. Just turned 16. Do you believe that there is any special problem with the testimony or response of juvenile aged 16 in terms of credibility on an accusation of rape?

Mrs. WEBB. Senators, I am not an expert on that, and I could not even attempt to answer a question like that. I just am not knowledgeable in that area.

Senator SPECTER. Well, you about speaking for yourself? Do you think that you were particularly susceptible at that age to tell a lie?

Mrs. WEBB. Yes.

Senator SPECTER. Mrs. Webb, one of the grave concerns arising from your case, is that it may lend a question to the testimony of other rape victims, real rape victims, as to their believability in a court proceeding. Do you have any feeling or sense as to what that impact may be given your own experience as a witness in a rape case?

Mrs. WEBB. Senator, when I came forward, I was only interested in getting Gary Dotson out because he is innocent and my recantation is the truth. What I said in 1979 was a lie. I can sympathize with rape victims because I am a woman, not because I was a rape victim.

I believe that, yes, there are brutal rapes, but I have not been a part of one and for me to comment on something that I really am not knowledgeable about would be foolish.

Senator SPECTER. So the impact of your case on other rape cases is something that you just put out of your mind because your concern is solely as to the issue in the Dotson matter?

Mrs. WEBB. I am concerned solely with getting an innocent man out of prison because of my lie.

Senator SPECTER. You have had some experience now with the application of the legal principles on recanted or changed evidence. Based on your own view, do you think that those legal standards are too high or too tough to grant a new trial or to cause the release of a man like Dotson?

Mrs. WEBB. I believe that there has been new evidence brought out as to what the first forensic expert testified to and based on that and my recanted testimony, I feel that Gary Dotson is entitled to a new trial.

Senator SPECTER. When you say, change in testimony of the forensic witness, which testimony or evidence are you referring to specifically?

Mrs. WEBB. I believe that Mr. Dixon testified that only 10 percent of an elite blood group could have produced that semen. That was an incorrect statement on his part. It turns out that 66 percent of the male population could have produced the sperm.

Senator SPECTER. I do not intend to delve into the evidentiary matters because I have already discussed those with Mr. McLario, but I would like to ask you about the sequence as to your being found dazed, according to the officer who came to the scene and the varieties of bruises and injuries that were reported on various parts of your body and ask you, what occurred there?

Was that all just made up and fabricated?

Mrs. WEBB. The rape story that I testified to in 1979 was completely fabricated. What I said on April 4, 1985, is the truth.

Senator SPECTER. When you were interviewed yesterday by my chief counsel, Mr. Neal Manne, there was some suggestion that on the identification in 1977, that you may have been prompted to identify Mr. Dotson.

Would you care to make any comment about that?

Mrs. WEBB. The statement is correct. I believe that I may have been prompted considering that I went through many police mug books at the police stations and did not identify anyone because I did not want to identify anyone. There was never a rape and there could never be a rapist.

Senator SPECTER. So what happened to your——

Mrs. WEBB. So then I was—a policeman or men, I am not sure if it was one, two, a woman, well, let me rephrase that. I am not sure how many there were. I know that there was a policeman involved.

He came to my house with a handful of mug shots taken from mug books that I had already looked at. Presented them to me and I went through them and said, no, and handed them back.

And he said something, like, look again, and handed them back to me. And there was a picture of a man who, it turns out, was Gary Dotson that was in that handful. And I felt, at the time, that that picture looked very much like the police artist sketch that I had, that the artist had drawn out of my head, and if I had said no, that was not him I thought that that would be to admit my lie, at the time.

Senator SPECTER. Mr. Manne discussed with you, your statement about donating any proceeds from any book or movies and I ask you this question on the issue of motivation to falsify, you have made a statement that you will not accept personally any proceeds from a book or movie rights, or whatever monetary benefit that may accrue to you as a result of the notoriety that is attached to this situation?

Mrs. WEBB. I believe that Mr. Dotson is entitled to any monetary benefits that he can get or that I can get for him. And I am not looking to make any money off of this. All that I want to do is to see an innocent man released.

Senator SPECTER. Mrs. Webb, would you have any suggestion as to any studies which could be undertaken by the Office of Juvenile Justice and Delinquency Prevention or by the witness protection units, which we make recommendations to, which could shed some light on your own situation, as it might be applicable to other cases, to prevent a similar injustice from occurring in the future?

Mrs. WEBB. Sir, I am not an expert in the area. I do know that my attorney, Mr. McLario, could shed some light on that considering that he has worked so closely with me.

Senator SPECTER. Mr. McLario, do you have any suggestions as to any studies that might be undertaken by the Office of Juvenile Justice and Delinquency Prevention or the Office of Justice Programs which could set a standard or a tone that might prevent the occurrence of this type of a situation?

Mr. MCLARIO. Only a thorough investigation and I think that if a person would evaluate Cathy's childhood, they could see why she turned out to be a liar, and why she was a callous person, uncaring and could do the horrible thing that she did.

I think thorough investigation of rape cases, not only to convict the rapist but to free the innocent would be my recommendation.

Senator SPECTER. Mr. McLario, there was a polygraph administered to Mrs. Webb in this matter?

Mr. MCLARIO. Yes, there was.

Senator SPECTER. And the results were?

Mr. MCLARIO. Were all that she was telling the truth. I have a copy of the polygraph here, and you should know this that the polygraph examiner asked me that if there was any question about her testimony, could he examine her because he said that I, personally as her attorney, should know and he has gotten people who were guilty to confess, when everybody believed that they were innocent so that he wanted to help me in that regard.

I have such confidence in Cathy that I again, submitted her to him and the questions were very penetrating——

Senator SPECTER. May I see that while Senator Simon proceeds? Senator Simon?

Mrs. WEBB. May I just elaborate on something I did not add?

Senator SPECTER. Yes, you may proceed, Mrs. Webb.

Mrs. WEBB. Before the trial, I was given a copy of the briefing of my story that I had given in 1977. And I basically just about memorized the story because it was a lie I needed to do that, in order to remember what the lie was so that at the trial I could intelligently tell my lie.

Prior to going on the stand, I was taken in the back by the prosecutors and they told me that I needed to say, in order to convict the man of rape, that his penis was inserted in my vagina, and in addition to that—and I do not remember the exact words—but I do know that I got the idea that I needed to say certain things very forcefully to sway the jury in favor of convicting Mr. Dotson, such as, I will never forget that face.

I do not believe at this time that those were words that I thought up but that they may have been placed in my mind by someone else.

Senator SPECTER. But you are not sure?

Mrs. WEBB. I am not sure, no, but I do know that I got the message that I had to be very forceful in the way that I presented my identification.

Senator SPECTER. Senator Simon?

Senator SIMON. Yes, thank you, Mr. Chairman.

You mentioned, Mrs. Webb, that you talked to your pastor's wife and then your husband, and then Mr. McLario.

Did you know Mr. McLario before?

Mrs. WEBB. No, I did not.

Senator SIMON. How did you happen to go—I am not picking on Mr. McLario, but how did you happen to go to Mr. McLario?

Mrs. WEBB. Well, after Mrs. Nannini came home and told Pastor, well, when he realized that I did want to make restitution for this, after talking with me and my husband, he suggested that I contact Mr. McLario, because Mr. McLario had been a friend of his when Pastor lived in Wisconsin.

Senator SIMON. And as you look upon this experience that you have gone through, which has been aggravated by television lights and reporters and Senators and all kinds of other people coming to you, would some special kind of counseling or assistance that would be available to someone in your situation be of help?

Mrs. WEBB. I do not know that I could speak for somebody else, but I have received much support within my own family and from the Lord basically. I do not feel as though I personally need any other counseling to come forward on my recantation. I made my decision on my own, no one had to come to me because no one knew prior to my recantation that it was a lie. Personally my faith and my courage have come from the Lord and he has infinite courage and strength.

Senator SIMON. Someone who may see this on television or may have read about your case, someone else who may have lied in order to protect himself or herself, who had gone through the experience that you have gone through, what would you tell someone who said, I have been in court and I have lied, what should I do?

Mrs. WEBB. Well, I believe that nothing that I have gone through so far is compared to the agony that Mr. Dotson has faced in prison because he is innocent. And I really cannot pay him back for what I did to him, other than that I can try. If somebody lied, then by all means come forward and tell the truth and get that innocent person out of jail. And seeing him when he walks out of those prison doors, this is going to be all worth it to me, to see him freed.

Senator SIMON. And the pangs of conscience that you went through, you feel a great sense of relief for having come forward and told your story and let the world know what the facts are?

Mrs. WEBB. Yes, and no.

I do not feel that I am at peace yet, because Mr. Dotson who is innocent is not out of jail yet. And I cannot feel at peace about the situation until he is released with a cleared name, not just clemency. How can you be pardoned for something that you never did?

I am thankful that the Governor is willing to speed up the matter to get him out of prison because each day in that prison is a 1,000 days of agony and I am very thankful for that. However, I want to see his name cleared totally and it has been, it will be all worth it to see him freed.

Senator SIMON. I thank both of you, very much.

Thank you, Mr. Chairman.

Senator SPECTER. Thank you, Senator Simon.

Mr. McLario do you have a signed letter from Mr. Cummings the polygraph examiner, the one that you gave me is unsigned?

Mr. MCLARIO. Yes, I do.

I believe that I have it with me, but I am not certain.

Senator SPECTER. Would you supply one for the record?

I think that it should be made a part of the record, and we would like to have a signed one.

Mr. MCLARIO. So that the record is correct, that one was taken by the telephone typed up by me word for word and then within a few hours I got the letter from him from Chicago, IL.

Senator SPECTER. Well, this appears on what purports to be his stationery?

Mr. MCLARIO. It was his card that was placed.

Senator SPECTER. So you photostated his card on a piece of paper and then typed what you got over the telephone?

Mr. MCLARIO. That is correct, and we do have an exact copy though, that he sent to me a few hours later.

Senator SPECTER. Well, we would like to have his report and signed by him.

Mr. MCLARIO. Of course.

[Letter from polygraph examiner follows:]

*Robert C. Cummins, Inc.*
POLYGRAPH LABORATORY
8 SOUTH MICHIGAN AVENUE. SUITE 1308
CHICAGO, ILLINOIS 60603
AREA CODE 312
TELEPHONE 346-3939

April 15, 1985

Attorney John J. McLario
NBB W16783 Main Street
Menomonee Falls, Wisconsin 53051

Re: Cathleen Mae Webb
S-85-88

On April 13, 1985, Cathleen Mae Webb voluntarily submitted herself for a polygraph examination to determine whether or not she had any physical (including sexual and personal) contact with Gary Dotson on Saturday, July 9, 1977.

It was also to be determined whether or not she had given any false testimony under oath, or purposefully withheld any testimony, in front of Judge Richard L. Samuels on Thursday, April 4, 1985, regarding her recanting her previous testimony of about six years ago accusing Gary Dotson of rapeing her on Saturday, July 9, 1977.

Release signed.

It should be carefully noted that Cathleen Mae Webb signed a release prior to her polygraph examination and acknowledged orally during her polygraph examination that the results of her test, good or bad, would be made available to her attorneys, The Cook County States Attorney's Office, and The News Media.

It should be further carefully noted that her Attorney John McLario advised the undersigned that he could ask Cathleen Mae Webb any question he deemed necessary, and as many questions he wished to thoroughly cover the issues under investigation including any subsequent interrogation if there were any indications of deception by his client during her polygraph examination.

(1) On July 9, 1977, were you physically with Gary Dotson?
Answer - NO Opinion - TRUTHFUL

(2) On July 9, 1977, did you take part in a sex act with Gary Dotson?
Answer - NO Opinion - TRUTHFUL

(3) On July 9, 1977, the night you said you were raped, did you have any physical contact with Gary Dotson?
Answer - NO Opinion - TRUTHFUL

(4) On July 9, 1977, did you take part in a sex act with anyone?
Answer - NO Opinion - TRUTHFUL

(5) Had you physically seen Gary Dotson before you viewed him in the police line-up?
Answer - NO Opinion - TRUTHFUL

(6) On Thursday, April 4, 1985, did you tell any lies before Judge Richard L. Samuels?
Answer - NO Opinion - TRUTHFUL

(7) On Thursday, April 4, 1985, did you give any false testimony under oath before Judge Richard L. Samuels?
Answer - NO Opinion - TRUTHFUL

(8) On Thursday, April 4, 1985, did you purposefully withhold any information while under oath before Judge Samuels, about what truthfully happened to you on July 9, 1977?
Answer - NO Opinion - TRUTHFUL

(9) Have you been offered or promised anything by anyone to change your testimony about Gary Dotson sexually assaulting you?
Answer - NO Opinion - TRUTHFUL

(10) Have you received anything from anyone to change your testimony about Gary Dotson sexually assaulting you?
Answer - NO Opinion - TRUTHFUL

Respectfully submitted,

Robert C. Cummins

Robert C. Cummins

Senator SPECTER. Thank you very much, Mrs. Webb, we appreciate your testimony.

Mr. MCLARIO. Thank you, Senator.

Senator SPECTER. I would like now to call our final two witnesses, Dr. Charles B. McDowell and Dr. Ellen Frank, would you step forward please?

Dr. McDowell is the Chief of the U.S. Air Force Office of Special Investigation Studies in the Special Studies Division at Bolling Air Force Base.

Dr. McDowell has conducted research in numerous cases involving rape matters and has quite a range of experience to present and I might say, in passing, Dr. McDowell that I was once in the Office of Special Investigations myself, many years ago during the period of 1951 to 1953.

Welcome and we are looking forward to your testimony.

## STATEMENT OF CHARLES P. McDOWELL, U.S. AIR FORCE, OFFICE OF SPECIAL INVESTIGATIONS, WASHINGTON, DC

Dr. MCDOWELL. Thank you, sir. Although I am a special agent with the Office of Special Investigations, there is no Air Force interest in this matter, and I am appearing as a private citizen. The information that I would like to impart to the subcommittee is based on research I have done in my current capacity.

For those who do not know, the Air Force Office of Special Investigations has the responsibility for investigating major crimes that occur within the Air Force. These of course, include rape. In my particular capacity I have the occasion to engage in original criminological research and it is extremely important that I must tell you why.

Most investigations support a prosecutive model. That is, they take an allegation and ask whether or not the basic elements of the offense are present; they gather evidence, and they prepare a case for prosecution.

Investigators and law enforcement agencies throughout the country have precious little time to engage in more behaviorally oriented research. As a consequence, there are great gaps in our knowledge. And as an investigator and as a social scientist, I have had the opportunity to see a large number of criminal cases, and I hope

to develop new and useful information for investigators. I am particularly interested in the phenomenon of false allegations. False allegations, I might say, Senator, cut across all socio-economic lines; they involve males and females, and they involve a wide range of offenses extending from assault to rape to murder and so on.

I believe that it is important for us to understand as much as we can about this phenomenon so we can clearly distinguish between instances in which we have an actual offense and those in which the offense lacks merit.

This is necessary in order to enable us to successfully prosecute, for example, rapists, while at the same time conducting investigations that exonerate those who are innocent. I have been particularly interested with the problem of false allegations of rape because we, as the other service branches do, conduct numerous investigations into this offense. And pursuant to this interest, I have analyzed rape investigations between 1970 and 1984; specifically 1,218 cases. Approximately 341 of those cases were false allegations.

Senator SPECTER. How many of those were rape cases?

Dr. MCDOWELL. Well, I do not have the exact figures with me, but the total——

Senator SPECTER. If you could break those down and supply them to us I would be very much interested in that.

Dr. MCDOWELL. Yes, sir, I will get those to you.

[Information follows:]

Of the 1,218 cases studied, 460 were conclusively determined to have been forcible rapes; 212 were false allegations, and the remaining 546 cases could not be classified with absolute certainty.

Dr. MCDOWELL. Suffice it to say that a substantial number of those were false allegations.

I wanted to see if I could determine whether or not there were any characteristics that were unique to false allegations, that would enable an investigator to distinguish that kind of case from a genuine rape.

Now, I must say that it is not our position to sit in judgment on an allegation. The purpose of doing this is to develop an investigative logic that can be given to investigators to enable them to efficiently and successfully resolve the allegation.

In fact, I did discern a number of important items and I have placed them together to form a paradigm or a model. My research is not yet complete and I must tell you that.

In spite of that fact, it has been very, very useful in approaching these kinds of cases. I have coordinated with my colleagues at the FBI behavioral science unit at Quantico and have received considerable encouragement and support from them.

Perhaps some of the information I have developed here, may have a bearing on this case and for that reason I would like to offer myself for any questions you may have.

Senator SPECTER. Well, based on your inquiries today, what are your conclusions as to this case?

Dr. MCDOWELL. You want the straight conclusion, Senator?

Senator SPECTER. The straight conclusions.

Dr. McDOWELL. Yes, sir, in my opinion, based on the information contained in the original trial transcript, the information contained in the recantation, and other data made available to me, I must say that Cathleen Crowell Webb's original allegation fits the model of a false allegation.

Senator SPECTER. What about all the alleged, we will use that word frequently in our discussion, of the alleged inconsistencies in her testimony, for the pattern of the story and the bruises, is it consistent that a young woman, just turned 16, would arrange such an elaborate scheme of bruises, scratches, injuries, dazed condition?

Dr. McDOWELL. Yes, sir, it is.

One of the characteristic features of a false allegation—and may I digress for just a second—is that a false allegation is always instrumental. It solves a problem of some kind, whereas a forced rape does not. A forced rape is a problem in its own right. Many people in their early and middle teen years go through a tremendous period of personal crisis, and many of these people have inadequate coping resources for a variety of reasons. Faced with a problem which they see as being overwhelming, a false allegation may offer a solution to the problem, and therefore these allegations are not uncommon and if viewed from the perspective of the nominal victim, they make very, very good sense.

Senator SPECTER. Dr. McDowell, because of the limitations of time, let me ask you, considering the fact that you have studied this case, with some intensity, how do you account for the different conclusion which the trial judge reached to deny Mr. Dotson's application for a new trial?

Dr. McDOWELL. I would have to say, Senator, that the trial judge is not familiar with the indicators that I have developed.

And what he is evaluating is in effect a procedural due process model which was presented before him.

Senator SPECTER. And what are those indicators?

Dr. McDOWELL. The indicators, and I will be as quick as I can, and I must caveat it by saying that no one indicator is diagnostic. You have to take them in an aggregate. People who make false allegations tend to allege that the offense was committed by a complete stranger. This absolves them of responsibility for a relationship.

Second, the victim will invariably claim to have offered vigorous and continuous resistance, a resistance that did not result in serious reprisals from the rapist.

Third, the victim will claim either multiple assailants, or what I have called the single boogey man.

Fourth, the absence of collateral sexual acts. In general, false allegations of rape allege a penile penetration and do not contain collateral allegations for forced fellatio or cunnilingus and so on.

Fifth, there is a vague recall of the details of the rape or conversely, an over-reporting of numerous small details.

Sixth, and this is one of the key issues, involves the physical presence of injury. False allegations include injuries that are generally limited to sharp cuts, scratches, and bruises, usually to the breast, face, neck and torso. The cuts and scratches, however, will not cross the eyes, the lips, the nipples or the vagina. In many cases, these scratches are extensive.

Senator SPECTER. How about the vaginal injuries here?

Dr. MCDOWELL. The testimony on that is unclear. As near as I can tell, sir, it is indicated that the injury was to an area below the navel but above the pubic hair.

The specific location was never clarified in the documents that——

Senator SPECTER. If there were in fact vaginal injuries, would that change your conclusion?

Dr. MCDOWELL. Specific vaginal injuries?

Senator SPECTER. Yes.

Dr. MCDOWELL. It could very well, yes, sir.

But perhaps the most compelling argument is that in my experience—and I hasten to add, my research is not complete and I can be proven wrong—I have no knowledge of a legitimate rape victim who has been written on, that is, had words or phrases inscribed on her body, particularly in the lower abdomen. Yet I find that this is fairly characteristic of many false allegations.

It is my understanding in this case that words were written on Mrs. Webb's abdomen.

Also, the injuries themselves may be compelling in their appearance, but they are not serious, that is, they do not require any kind of significant medical attention.

Seventh, the report is generally not made to law enforcement personnel because the victim simply does not want an investigation. It is the allegation itself that solves the problem.

Eighth, the victim cannot tell where the crime took place, or offers a vague description.

Ninth, the crime scene itself may not support the allegation.

Tenth, and this is not present in this case, but we find a number of victims who allege either notes, or phone calls preceding or following the crime. This is done to bolster the allegation.

We find that when we examine the victimology, we find individuals with numerous personal problems, people who are having difficulty in their personal relationships such as with a boyfriend, husband, or their family and occasionally individuals who have a history of incidents suggestive of this kind of hoax.

Finally, the allegation is always instrumental: It solves a problem.

Senator SPECTER. Thank you very much, Dr. McDowell, that is very interesting.

I will insert your statement into the record.

[The prepared statement of Dr. McDowell follows:]

## PREPARED STATEMENT OF CHARLES P. MCDOWELL

Although the comments which follow are based on research I have conducted as an employee of the Air Force Office of Special Investigations, they do not reflect the position or official policy of the United States Air Force.

I am a Special Agent with the Air Force Office of Special Investigations, the agency responsible for investigating major crimes within the Air Force. I am presently assigned as Chief of the Special Studies Division within our Directorate of Investigative Analysis. Part of my work involves original criminological research in which I attempt to learn new things about traditional crimes. I do this in order to develop improved kinds of investigative logic which our agents can apply in their investigations. My working goal is to produce a better, more efficent means for investigating serious crimes.

Law enforcement agencies have traditionally and properly approached crimes as "prosecutive" entities and have left the theoretical world of crime to academicians and other researchers. Unfortunately, this has created a "disconect": the law enforcement community has the actual cases while the researcher typically does not. Even where case files are available to researchers, they tend to have three built in biases: First, they represent only those issues the police have been willing or able to investigate. Second, they only contain what the police have been willing or able to record. Third, they are cases the police have been willing to share with researchers -- and there are many reasons for witholding cases. As a result, there have been major problems with the validity and reliability of the data available to researchers. The results have been predictable: there are significant gaps in what we know about crimes and criminals.

Recognizing this, I have gone back though our closed case files and attempted to extract the human side of these tragedies in the hope of gaining a better understanding of just what goes on. I have discovered that our investigations involve exquisitely complex events which, in their aggregate, often tell a story overlooked by criminal investigators. I have become particularly interested in the phenomenon of false allegations. They are an important issue in both the criminal and juvenile justice systems for several reasons:

-- They needlessly consume law enforcement resources which could be better used in pursuing actual crimes.

-- They place true crime victims at a disadvantage by reducing the resources available to them and by forcing them to defend their own victimization.

-- False allegations - if unrecognized as such - allow genuine (but non-law enforcement) problems to go unrecognized and untreated.

-- They jeopardize those innocent people who are falsely accused.

Although my research is far from complete, I have begun to unravel some of the whys and wherefores of false allegations, especially in the areas of rape and assault. It is becoming increasingly clear that these cases share a number of common features which, taken collectively and in their overall context, may well enable us to quickly recognize false allegations. Thus far we have learned that:

-- The false allegation is always instrumental: it solves a problem. Sometimes its hard to tell what the problem is, because it must be understood from the "victim's" perspective and not ours. It might be to assuage guilt; to "justify" examinations for pregnancy or venereal disease; to conceal evidence of promiscuity; to avoid responsibility; or even to exact revenge. Even in cases where the person is suffering from a severe mental or emotional disorder, the allegation serves some purpose. A genuine rape, on the other hand, does not serve a purpose for its victim: it is a serious problem.

-- Its features typically do not coincide with the reality of what they allege. False allegations are fabrications: The "victim" does not recount what happened to her - she either makes it up or distorts an actual event. What makes this important is that these fabrications typically differ from true reports in certain key respects.

Thus far we have developed a rough model which we can be applied in rape cases. This model is based on a careful comparison between actual and false rape allegations. Although our ongoing research is still incomplete, preliminary results have proven to be extremely useful. By means of this model we are able to identify those cases which we feel are probably false allegations. The model thus enables us to utilize our investigative resources more quickly and effectively. Perhaps more importantly, it assists us in matching problems with their most appropriate solutions.

As I continue to develop the theoretical basis for false allegations I hope to refine the model and extend its use to other areas of criminality. I hope that in time we can achieve a better understanding of human frailty so that we can dedicate the best and most appropriate resources to these problems.

**STATEMENT OF DR. ELLEN FRANK, WESTERN PSYCHIATRIC INSTITUTE AND CLINIC (UNIVERSTIY OF PITTSBURGH SCHOOL OF MEDICINE). PITTSBURGH, PA, ON BEHALF OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION**

Dr. FRANK. Mr. Chairman and members of the Senate Subcommittee on Juvenile Justice, it is an honor and pleasure to be invited here on behalf of the American Psychological Association to discuss the consequences of rape victimization.

I share the subcommittee's concern that the widespread attention surrounding the *Webb* case may have a chilling effect on women pressing rape charges and may increase the skepticism of jurors in determining the truthfulness of their claims.

In my statement I'd like to address three major questions concerning psychological aspects of rape. First, what are the mental health consequences of a rape victimization? Second, what factors influence recovery from rape trauma? And third, under what circumstances are rape victims most likely to participate in the criminal justice process?

I think before I do that, it is important to provide some statistical information on the nature and extent of the crime of rape. As I am sure you are aware, recently the Bureau of Justice Statistics compiled a report based on all national crime surveys between 1973 and 1982 in cases of adolescent and adult female rape. The report estimates that during that 10-year period there were 1.5 million rapes of females over the age of 12 in the United States; only half of those crimes surveyed were reported. The highest rates are for the young, the highest age of risk is between 16 and 24. Unmarried women, poor women, black women are all at increased risk as compared with the general population.

The sample indicates that two-thirds of the assailants were strangers; however, statistics from rape crisis centers, from other research studies, and from our own, show that at least equal numbers of stranger and acquaintance rapes occur, suggesting that acquaintance rape is much less likely to be reported even in a survey interview.

Let me address the mental health consequences of rape. A recent review of this question by Dr. Elizabeth Ellis of the University of Georgia, in which she looked at all empirical studies including our own, suggested that there is a three-part reaction to rape. There is a short-term reaction which involves a wide range of somatic symptoms, sleep disturbance and nightmares, tremendous fear and anxiety, serious, even suicidal depressions, and difficulties in social functioning.

At 6 weeks and beyond, recovery from this initial reaction begins. But these same studies provide evidence for an intermediate reaction, usually seen between 3 months and about 1 year after the assault. During that period, women continue to experience depression, social problems, sexual problems, and high levels of rape-related fears. These same empirical investigations provide evidence for the long-term reaction which is still observed after 1 year which tends to involve a continuing sense of anger, a diminished capacity to enjoy life, hypervigilance to danger, and continued sexual dysfunction. A woman may return to her job and function perfectly

well 2 years after rape, but she is still unable to sleep unless the lights are on.

Our own research has demonstrated that contrary to what one might expect, the nature of the rape does not determine the nature of the response. We find that victims are equally depressed, fearful, guilt-ridden, socially dysfunctional and self-denigrating, whether they were raped by a stranger or by someone who was known to them, whether there was a weapon involved or no weapon, whether they were raped in a place that they had originally considered to be safe—for example, their own home—or in a place which they knew to be dangerous, a bus stop——

Senator SPECTER. You are suggesting no difference between a drag-them-off-the-street rape case as contrasted with a social contact at a bar?

Dr. FRANK. I know that that is difficult for people to believe, and in fact, the early descriptive studies of rape victimization suggested that there were such differences, but when one actually examines and tests victims, what one sees are no statistically significant differences. In fact, nothing that even approaches a difference. Suggesting that the psychological consequences of the crime are very much the same, and I believe that is because in the context of a rape, a woman really does fear for her own life. She has lost control in the one area where we most expect to have control and has no reason to believe that death may not also be a consequence. So the psychological aftermath is very much the same regardless of the prior circumstances.

Let me talk about what factors influence recovery from rape. All of the empirical studies point to a reduction of major symptoms with the passage of time in most victims. However, a different picture emerges when one explores the consequences of rape from both those victims who came to the attention of a research study, a mental health center, a rape crisis center, and those victims who never came to light.

When Dr. Dean Kilpatrick of the Medical University of South Carolina examined the results of an anonymous phone victimization survey of over 2,000 women—this was conducted for him by the Lou Harris Organization and meets all the standards of a correct scientific investigation—Dr. Kilpatrick found that among women who reported being victims of completed rapes, 16 percent had suffered a nervous breakdown, 44 percent had contemplated suicide, and 19 percent had attempted suicide.

Senator SPECTER. Dr. Frank, I'm reluctant to interrupt you, but we are very short on time.

Dr. FRANK. Surely.

Senator SPECTER. If you would give us just the essence, there are a couple of questions that I would like to ask and Senator Simon will have questions.

Dr. FRANK. The other points that I would make briefly are that certainly having good coping mechanisms facilitates recovery, having a supportive social network, a network of friends and family who are supportive, facilitates recovery. One of our most interesting findings is that even one unsupportive or antagonistic family member or friend, someone who says, "Well, what were you doing there?" can tip the balance between someone who is able to

recover and someone who is not able to recover. I think the points I would like to make with respect to who presses charges are that we know that women who were raped by strangers are more likely to press charges, women who sustain serious physical injuries are more likely to press charges, but what our own research suggests is that women who, to begin with, have higher self-esteem are also more likely to press charges, significantly more likely. And what concerns me is that if the current criminal justice system is one in which only the most self-confident victims feel that they will be believed, then the needs of the community to protect itself from future victimization and the need of the individual victim to see justice done are not being met.

Rape is not a myth. We would all like to believe that rape is a myth, but it does happen and the mental health consequences are considerable, probably because we would prefer to believe that in most cases women fabricate claims of rape or that they ask for it by the way they dress or act or where they go. We cling to these old notions.

[The prepared statement of Dr. Frank follows:]

## Prepared Statement of Dr. Ellen Frank

Mr. Chairman and Members of the Senate Subcommittee on Juvenile Justice, it is indeed an honor and a pleasure to be invited here today to testify on behalf of the American Psychological Association on the psycholcgical reactions to rape. The American Psychological Association (APA) has been concerned with the psychological consequences of victimization for some time and recently released the Final Report of the APA Task Force on the Victims of Crime and Violence which dealt extensively with the crime of rape. I am pleased that the Subcommittee has directed its attention to the psychological trauma experienced by rape victims and the factors which influence their participation in the criminal justice system.

I am Dr. Ellen Frank, a clinical psychologist and an Associate Professor of Psychiatry and Psychology at the Western Psychiatric Institute and Clinic of the University of Pittsburgh School of Medicine. My professional expertise in the area of rape victimization reflects seven years of conducting Federally funded research on the psychological response to rape and on the psychological treatment needs of recent rape victims. During this seven-year period, my research team and I have assessed and treated about 250 adolescent and adult women who were victims of sexual assault.

Women's reactions to rape have recently received national media attention in the Chicago case concerning Cathleen Crowell Webb and Gary Dotson. The case involves a recantation of rape charges on the part of Webb six years after the conviction and imprisonment of Dotson for rape and aggravated kidnaping. Webb now claims that her original testimony was "a lie". After much deliberation, the judge in the case let stand the guilty verdict delivered by the 1979 jury.

Across the country people are now questioning the veracity of Webb's original testimony and the possible motivations which led her to recant this testimony six years later. In this regard, I share the Subcommittee's concern that the widespread publicity surrounding this case may have a chilling effect

on women pressing rape charges and may increase the skepticism of jurors in determining the truthfulness of their claims.

In my statement, I will address three major questions concerning psychological aspects of rape: 1) What are the mental health consequences of rape? 2) What factors influence recovery from rape trauma? and 3) Under what circumstances are rape victims most likely to participate in the criminal justice process?

Prior to a discussion of these issues, it is important to provide some statistical information on the nature and extent of the crime of rape. The Bureau of Justice Statistics (BJS) of the U.S. Department of Justice recently issued a report on the national incidence of rape and attempted rape for the 10-year period between 1973 and 1982. Over this time period, there were an estimated 1.5 million rapes and attempted rapes of females over the age of 12 in the United States. Only half of the crimes surveyed were reported to the police. The highest victimization rates were for the young. Those between the ages of 16 and 24 were two to three times more likely to be victimized. Unmarried women, poor women, and black women are all at increased risk for victimization. The sample indicates that two-thirds of the assailants were strangers. But statistics from rape crisis centers and our own research show equal numbers of stranger and acquaintance rape, suggesting that acquaintance rape is less likely to be reported even in a survey interview. Somewhere between 50% and 60% of completed rapes involve the use of a weapon.

1) <u>What are the mental health consequences of rape</u>?

A recent review by Dr. Elizabeth Ellis of research on rape (including our own) points to three sequential reactions to a rape experience. Ellis describes a <u>short-term reaction</u> which includes a wide range of symptoms such as physical complaints (nausea, aches and pains, vaginal irritation and loss of appetite), sleep disturbance and nightmares, fear, anxiety, major depression, and difficulties in social functioning. Initial high scores on tests of depression, fear, anxiety, and social maladjustment evident in all

empirical studies reflect this traumatic reaction. At six weeks and beyond, recovery results in a marked reduction of these symptoms. These same studies provide evidence for an intermediate reaction seen between three months and one year after the rape. Symptoms include depression, social problems, sexual problems, and anxiety about rape. These empirical investigations also provide evidence for a long-term reaction which is still observed at one year and beyond involving anger, diminished capacity to enjoy life, hypervigilance to danger, and continued sexual dysfunction.

Our own research has demonstrated that, contrary to what one might expect, the nature of the rape does not appear to influence the nature of the trauma experienced. We find that rape victims are equally depressed, fearful, guilt-ridden, socially dysfunctional and self-denigrating whether they are raped by a stranger or by someone known to them, whether a weapon was involved or not, whether the location of the rape was one which the victim had originally perceived to be safe (e.g., her own home) or one she believed to be dangerous (e.g., a poorly lit bus stop). We do find, however, that women with a past history of depression or anxiety-related problems have a more severe initial traumatic response and greater difficulty in social functioning than those who had no such problems in the past.

2) What factors influence recovery from rape trauma?

All empirical studies of rape trauma point to a reduction of major traumatic symptoms in most victims with the passage of time. Dr. Dean Kilpatrick and his associates in Charleston, South Carolina, Dr. Karen Calhoun and her colleagues in Altanta, Georgia, and our own research group in Pittsburgh have all documented considerable improvement in the majority of the rape victims participating in our own studies by three months post-assault. However, Calhoun and associates found 26% of their victimized subjects reporting mild to severe depression at one year (as compared with only 17% of non-victimized control subjects) and Kilpatrick's group has demonstrated the persistence of rape-related fears at one year and beyond.

This summarizes what we know about the psychological consequences of rape from the vantage point of researchers collaborating with rape crisis centers

and hospital emergency room settings. A different picture emerges when one explores the consequences of rape both for those victims who come to the attention of institutions and those who do not. When Kilpatrick examined the results of an anonymous random phone victimization survey conducted for him by the Lou Harris organization, he found that among women who reported being victims of completed rapes, 16% had suffered a nervous breakdown, 44% had considered suicide, and 19% had attempted suicide. Obviously, there is no way to estimate how many succeeded in committing suicide following a rape. It is important to remember that this survey includes both women who had contact with mental health professionals and women who did not.

Contact with mental health professionals and the use of certain psychological treatments have been shown to facilitate recovery from rape trauma. Among the subjects we have studied who were provided psychotherapy and assessed periodically, fewer than 15% would still be rated as depressed at one year, making them more comparable to a control group of women who had not been raped than to rape victims not receiving psychotherapy.

The Atlanta researchers have also reported data on the social adjustment of the rape victims they studied. A comparison between the social adjustment scores of the rape victims in this study who did not receive psychotherapy at four months with the scores obtained at three months for the victims in our study who were provided psychotherapy sheds additional light on the impact of treatment. While the untreated victims in the Atlanta study displayed a "fair" to "good" level of adjustment at four months, by three months the treated subjects in our study were at the "very good" adjustment level.

Furthermore, both Dr. Kilpatrick and Dr. Beverly Atkeson in Atlanta found lower levels of symptoms at each assessment point for subjects who had been exposed to repeated assessment by mental health professionals as compared to subjects exposed to their first assessment at the time. Indeed, both Calhoun and Kilpatrick have noted that subjects found the assessment process therapeutic, probably because of the empathy and reassurance provided by those who conducted the assessments.

Good coping skills have been found to facilitate recovery and poor coping skills to impede recovery from rape trauma. Our data suggest that several coping responses are important in determining post-rape adjustment; cognitive restructuring and self-denigration appear to be the most important. Cognitive restructuring involves the ability to focus on the positive aspects of a situation. In the case of rape, this may be evidenced by statements by victims such as: "It could have been worse, I could have died" or "If this hadn't happened, I would never have known how many people I can really count on." Those victims who can focus on their own physical survival or on positive lessons or experiences that resulted from the rape recover more quickly. Those victims who focus on their own errors in judgment (e.g., trusting a "phone repairman") or failure to take precautions (e.g., by not locking the car doors) have great difficulty recovering from depression.

Unsupportive or antagonistic family members and friends seriously impede recovery. Our own research suggests that although most people are supportive of victims, victims are particularly vulnerable to a lack of support from those they trust and rely upon. We identified those individuals who were important to the victim and assessed their supportive, unsupportive, and antagonistic reactions to the rape. Our results indicate that victims who perceived one or more of their family members or close friends as unsupportive displayed significantly more symptoms than victims with supportive friends and family members.

An individual victim's reactions to rape may be described as the outcome of a complex set of factors. A rape victim who has a history of good psychological functioning, an adaptive coping style, a supportive social network following the rape, and who experiences a rape in which brutality and fear for loss of life are minimal might be expected to experience a relatively mild and short-lived initial reation. She may be able to recover from this initial reaction without psychological treatment and without the development of serious secondary life disruptions (moving, job loss, etc.) and with little or none of the typical intermediate and long-term reactions. On the other hand, the individual with a past history of recurrent depression, a non-adaptive coping style, and unsupportive friends and family may have a difficult and protracted recovery even with psychological treatment.

3) Under what circumstances are rape victims most likely to participate in the criminal justice process?

Not surprisingly, women who are attacked by strangers and women who sustain extensive physical injury are more likely to report the rape to the police. Among the subjects in our own study, we found that in addition to the above determinants, women with higher self-esteem may be more likely to perceive the criminal justice system as an appropriate instrument for redressing an injury. If our criminal justice system is one in which only the strongest victims feel confident that they will be believed, then the needs of all victims are not being met, and the community's need to be protected from the assailants is not being met.

Rape is not a myth, although many people would prefer to believe that rape does not actually take place. But it does, and the mental health consequences are considerable, partly because we would prefer to believe that in most cases women fabricate claims of rape, or that they ask for it by the way they act or dress, or that... The old myths about rape are tenacious because they enable us to believe that the world is rational, that life is just, that our mothers and daughters and sisters and wives are safe on the streets and in their homes. I am convinced that part of the reason Ms. Webb's recantation has received so much attention is that across this country are newspaper editors, radio and television news directors, magazine editors and others who would prefer to believe - because they have mothers and sisters and wives, or because they are women themselves - that rape does not really happen.

And that would be fine if it were true. But rape does happen and when it does, those old myths become serious impediments to rape victims' recovery. If a woman grows up believing that "nice girls don't get raped" and then later becomes a rape victim, she is forced to conclude either that she is not a nice girl or that what happened was not a rape. If a woman believes that rape victims always "ask for it" and then she becomes a rape victim, she is forced to find the way in which she asked for it. Helping the rape victim to regain her self esteem is a difficult task once she has already concluded that she is no longer a nice or worthy person. Helping the woman who has concluded that

she brought the rape upon herself to see that she has no cause to feel guilty is equally difficult. We cling to the myths of rape at our peril: they increase our vulnerability by making us feel safe when we are not and they make the task of recovery from victimization much more difficult than it need otherwise be.

Thank you for the opportunity to testify today on behalf of the American Psychological Association on the subject of the psychological reactions to rape. If I can provide the Subcommittee with any additional information or resources, please do not hesitate to call upon me.

Senator SPECTER. Dr. Frank, what studies would you recommend by the Office of Juvenile Justice and Delinquency Prevention or by the newly formed justice programs which would bear on this central question, which is really the core of our hearing today. We have to see that justice is done in the individual case, and as Mr. Gary Dotson's freedom is at stake, justice has to be done there, whatever it is, and that has to be determined through legal procedures. But there is obviously a problem of the chilling effect by virtue of the circumstances here as they have evolved. What studies might be undertaken by the Federal Government where we have allocated funds for this generalized area which would support the mechanism to give women who have been raped the courage, the structure, support systems to come forward to report and have justice done in those cases? .

Dr. FRANK. I think the first thing that comes to mind is a serious empirical study of the effect of the rape advocacy movement. It seems to me that the initial impetus to provide rape crisis centers and legal advocacy for rape victims was a correct one. But the Federal funding and the State funding available for such centers is in a steady process of decline. It would be very beneficial if we could document the fact that legal advocacy for rape victims does increase the number of women who come forward and the number of successful prosecutions. I know, for example, that in Allegheny County where I reside, in the period since the establishment of rape crisis centers there has been a tenfold increase in successful prosecutions in cases of rape. And I have to believe——

Senator SPECTER. More reports as well?

Dr. FRANK. More reports, but the real question is, How many of the cases brought to trial are successfully prosecuted?

Senator SPECTER. Anything else by way of studies?

Dr. FRANK. I think that studies of advocacy are the most important. Certainly, other more general studies of what would facilitate women coming forward, speaking up, moving through the criminal justice system with the least amount of trauma.

Senator SPECTER. If you would give that some additional thought, if any more ideas come to mind, I would appreciate it if you would let us know.

Dr. FRANK. I think I can send you an entire study design.

Senator SPECTER. Senator Simon?

Senator SIMON. Yes. Two points you make: One is the percentages in a Harris poll. I find them very startling. Sixteen percent of victims suffered nervous breakdowns, 44 percent considered suicide, 19 percent had attempted suicide. So you are talking about something that is a very traumatic experience for the victims. Then, you point out that women with higher self-esteem are more likely to perceive the criminal justice system as an appropriate instrument for redressing injury and are going to come forward. Do you have any ideas on what we can do in a constructive way to encourage more people to come forward?

Dr. FRANK. Well, I think there have been a number of constructive things that have been done in the last 10 years in terms of the way in which victims are handled in emergency rooms, the kinds of things that the chairman was referring to at the beginning of the hearings, in terms of the way victims are interviewed, the circumstances under which they are interviewed. I think that continued education of police and particularly those squads identified as being responsible for the investigation of rape cases is particularly important. I think many important strides were made in the period between 1974 and 1983-1984. But I see a falling off in energy and attention to this problem. I think we were going in the right direction to begin with, and we need to pursue the avenues that were pursued in the mid- and late 1970's.

Senator SIMON. Maybe I am getting out of your area of your study and experience, but the police, are they generally responding the way they should to rape victims?

Dr. FRANK. I do a lot of traveling around the country to talk about this topic. My impression is that in the major cities in this country there has been tremendous positive movement and that in general—perhaps not the beat patrolman and patrolwomen but certainly the sex assault squads have become extremely sensitive and extremely efficient in their work with rape victims. My concern is the smaller police forces in the smaller towns in the small outlying communities where the old notions still hold true, where care in the hospitals is shoddy, where the chances of correct evidence gathering are minimal, at best. I think our attention should be directed to not the large cities but to the outlying communities, to the smaller communities where these kinds of changes have not yet taken place.

Senator SIMON. Your testimony was written before you heard Mrs. Webb and her attorney testify. Do you have any reflections upon their statements as you now sit here before us? Are there questions we can learn from Mrs. Webb's testimony or her attorney's testimony?

Dr. FRANK. I am really reluctant to comment on Mrs. Webb's testimony and her attorney's testimony. I think, as Dr. McDowell indicated, adolescence is an exceedingly difficult time under the best of circumstances, and it would appear that there were many complicating factors in Mrs. Webb's life at that time I think it behooves us to pay special attention to the needs of adolescents in a wide variety of areas, but in particular as victims of crime. Not just with respect to rape, but within a broad variety of victimization

categories. Adolescents are at very high risk for criminal victimization, and I think our concerns should be directed toward modes of preventing that kind of victimization, if possible.

Senator SIMON. I thank both of you. Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much, Dr. Frank, Dr. McDowell. Thank you, Mrs. Webb and Mr. McLario, for coming forward. I believe this has been a very useful hearing. I think that it is important to make a sharp distinction between the individual case and the doing of justice for Mr. Dotson, which is obviously the over-riding concern of the criminal justice system in his case and the potential collateral consequences of discouraging women from coming forward who are genuine rape victims. That is a matter of great national concern, has been long before Mrs. Webb has recanted her testimony in this case. And we will be reviewing your recommendations, Dr. Frank, and the recommendations of others with a suggestion to the Justice Program Department to undertake some studies here to see if the kinds of problems illustrated in Mrs. Webb's situation can be avoided and to see if we can strengthen the system for encouraging genuine rape victims from coming forward. Those two objectives appear to be at cross purposes, but they are not necessarily so, and that is what we have to direct our attention to.

That concludes the hearing.

[Whereupon, at 11:48 a.m., the hearing was concluded.]